

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.8611 OF 2003

The Shamrao Vithal Co-op. Bank Ltd. : Petitioner
V/s.

The Divisional Joint Registrar,
Co-op. Societies & Ors. : Respondents

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Mr.N.N.Bhadrashete for the petitioner.

Mr.M.H.Solkar, Asstt. Govt. Pleader, for respondent
nos.1 & 2.

...

CORAM : S.A. BOBDE, J.

January 19, 2005.

P.C.:

1. By this petition, the petitioner, which is a Multi-State Co-operative Bank, impugns the order dated 21.12.2002 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai. The impugned order holds that the Special Recovery Officer who was authorised as such under the provisions of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "1960 Act", had no jurisdiction to exercise the powers under the 1960 Act.

2. It appears that the petitioner obtained an award against a party to whom it had advanced a loan i.e. Kalbag. The petitioner, thereafter, levied execution before respondent no.4, P.V.Rajadhyax, who is designated as the Special Recovery and Sales Officer under section 156 of the 1960 Act. Respondent no.3, who claims to be the purchaser of a flat, which is said to have been mortgaged to the petitioner, filed a Revision Application before the Divisional Joint Registrar, Co-operative Societies, questioning the power of respondent no.4 to execute the award. The Divisional Joint Registrar has held that the Multi-State Co-operative Societies Act, 1984 has been repealed by section 126 of the Multi-State Co-operative Societies Act, 2002 with effect from 19.8.2002. Accordingly, respondent no.4 who was appointed as the Special Recovery Officer for exercising the powers under section 156 of the 1960 Act had no authority to take any action for recovery of the amount under the award. Therefore, according to the Divisional Joint Registrar, the panchanama which was issued for the purpose of making inventory after attachment of the property on 30.8.2002 is null and void and without authority of law.

3. Mr.Bhadrashete, learned counsel appearing for the

petitioner, referred to a circular issued by the Commissioner for Co-operation and Registrar of Co-operative Societies, which purports to confer powers of recovery on Officers on whom such powers have been conferred under section 156 of the 1960 Act even in respect of multi-State co-operative societies. However, the learned counsel fairly accepted the position that there is no provision under the Multi-State Co-operative Societies Act, 2002 whereby the powers of recovery under section 156 of the 1960 Act can be conferred on officers. In fact, it must be noted that under the 2002 Act, such disputes are liable to be decided by arbitration and recovery, if ordered thereunder, would be the procedure for enforcement of awards.

4. In any case, there is no error of law apparent on the face of the record of the impugned order. The Writ Petition is, therefore, hereby dismissed.

Sd/-

S.A. BOBDE, J.